

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 WILLIE RUSSELL,

10 Plaintiff,

11 v.

12 DEPUTY SHERIFF ZOELLIN, *et al.*,

13 Defendants.
14

CASE NO. C18-0827-JCC

ORDER

15 This matter comes before the Court on Plaintiff's motion for leave to amend (Dkt. No.
16 38). Having thoroughly considered the parties' briefing and the relevant record, the Court finds
17 oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

18 This is a civil rights action, in which Plaintiff alleges that Defendants, several Snohomish
19 County Sheriff's deputies, illegally entered his property and used excessive force against him
20 during an incident on June 16, 2017. (Dkt. No. 1 at 5.) Plaintiff initially named as Defendants
21 Snohomish County Deputy Sheriffs Zoellin, Berg, and Rogers, Snohomish County Deputy
22 Sheriff Sergeant Dill, and "Does 1-10, who are law enforcement officers from the Snohomish
23 Sheriff's Officer, the DOC and other Washington State law enforcement agencies, inclusive."
24 (*Id.* at 2.) Plaintiff's wife, Christine Harper, was also initially a plaintiff in this lawsuit, but she
25 voluntarily dismissed her claims against Defendants in January 2019. (Dkt. No. 14.)

26 Plaintiff now seeks leave to amend his complaint in order to: (1) remove Ms. Harper from

1 the complaint; (2) include the names of some of the Doe defendants that have since been
2 identified through discovery; and (3) remove certain state law claims that were asserted in the
3 complaint. (*See* Dkt. No. 38.) Defendants object to Plaintiff’s motion because the proposed first
4 amended complaint includes incorrect information regarding some of the Defendants’ names, it
5 still contains several allegations related to Ms. Harper’s claims that have since been dismissed,
6 and it contains allegations that appear to assert a *Monell* theory of liability without Snohomish
7 County being named as a Defendant. (*See* Dkt. No. 44.) In his reply, Plaintiff acknowledges that
8 several of the issues raised by Defendants should, and will, be corrected in his first amended
9 complaint. (*See* Dkt. No. 45 at 1–2.)

10 District courts are afforded discretion to grant leave to amend and “[t]he court should
11 freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).¹ The generosity in granting
12 leave to amend is “to be applied with extreme liberality.” *Eminence Capital, LLC v. Aspeon*,
13 Inc., 316 F.3d 1048, 1051–52 (9th Cir. 2003). Courts are to consider five factors in granting
14 leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of
15 amendment, and (5) whether the pleading has previously been amended. *See, e.g. United States*
16 *v. Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011).

17 None of the above factors weigh against granting Plaintiff leave to amend. There is no
18 suggestion that Plaintiff seeks to amend his complaint in bad faith or that Defendants would be
19 prejudiced by the proposed amendment. Plaintiff seeks to include additional information gained
20 through discovery and to remove many of the allegations related to Ms. Harper’s claims, which
21 have since been dismissed. Plaintiff has not previously amended the complaint, and none of the
22 proposed amendments appear to be futile. Regarding Defendants’ assertions pertaining to *Monell*

23 ¹ Plaintiff must also demonstrate that there is “good cause” for the amendment because its
24 motion for leave to amend was filed after the deadline for pleading amendments under the
25 Court’s scheduling order. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th
26 Cir. 1992); (Dkt. No. 12). The Court concludes that Plaintiff has demonstrated good cause
because the proposed amendment is primarily based on information gained through depositions
that occurred after the pleading amendment cutoff date. (*See* Dkt. Nos. 12, 38.)

1 liability, that issue is not before the Court, as Plaintiff does not seek to add Snohomish County as
2 a party in its proposed amended complaint, or seek to allege a *Monell* claim.

3 For those reasons, Plaintiff's motion for leave to file an amended complaint is
4 GRANTED. Plaintiff shall file his amended complaint no later than May 22, 2019. The amended
5 complaint shall conform with the proposed complaint filed under Docket Number 38, and
6 include the changes outlined in Plaintiff's reply brief. (Dkt. No. 45 at 1-2.) The amended
7 complaint shall not include any additional claims, allegations, or parties that were not included in
8 the proposed amended complaint. (Dkt. No. 38.)

9 DATED this 17th day of May 2019.

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13 John C. Coughenour
14 UNITED STATES DISTRICT JUDGE
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